IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 982 OF 2003

IN

SUIT NO. 3480 OF 1992

M/s. Gupta Development P.Ltd .....Plffs.
vs.
M/s. National Textile Corpn.
(South Maharashtra) Ltd .....Defnds.

Pradeep Sancheti i/b. P.K. Shroff and Co. for the plffs.

Chetan Kapadia a/w. Radhika Pinzare i/b. Bhai Kanga and Girdharilal for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 23rd September, 2005.

P.C. :

1. The present motion is taken out for dismissal of the suit on the ground that there is no cause of action. The application is under O.37 R.11. The suit is filed on the ground that the plaintiff's tender has been wrongfully rejected by the defendant and the suit is filed for specific performance of

the contract. Though it may be possible that on merits the plaintiff cannot succeed in the suit but to hold at the interim stage that the suit is either vexacious or there is no cause of action against the defendant is difficult. In my opinion the suit cannot be dismissed under O.7 R.11 at this stage. It requires to be tried. In that view of the matter motion dismissed. No order as to costs.

sd/-

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